HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARNUNA REDDY

WRIT APPEAL No.69 OF 2007

Between:

B.R.Granites, rep by,
Its proprietor, Guntur.

… Appellant

AND

Government of Andhra Pradesh,
Rep by its Secretary,
Industrial & Commerce Department,
Secretariat, Hyderabad.

And others.

… Respondents

: J U D G M E N T:

Counsel for the Appellant : Smt.N.Shoba.

Counsel for Respondents 1 & 2: Sri G.P. for Mines & Geology.

Counsel for respondent No.3 : Sri B.Adinarayana Rao, Advocate,
Assisted by Sri V.L.Surendra.

22nd February, 2007.

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Per C.V.Nagarjuna Reddy, J

This writ appeal is filed against order dated 3.11.2006 passed by the learned Single Judge in W.P.No.22120 of 2006 whereby he dismissed the writ petition filed by the appellant for quashing orders dated 10.6.2005 and 4.10.2006 passed by the Director of Mines and Geology, Andhra Pradesh (respondent No.2) and the State Government (respondent No. 1), respectively.

The appellant is a proprietorship concern. It was granted a quarry lease in respect of black granite over an extent of 3.846 hectares in survey No.58/P of Chimakurthy Mandal, Prakasam District for a period of 20 years vide proceedings No.26892/R3-2/2003 dated 21.11.2003 by respondent No.2. After one year and four months, respondent No. 2 issued notice dated 24.3.2005 and called upon the appellant to show cause within seven days as to why action should not be taken for determination of the lease on the ground that the appellant had failed to pay advance dead rent for the year 2005-2006 as required by Rule 12 (5)(h)(xii) of the Andhra Pradesh Minor Mineral Concession Rules 1966 (for short 'the Rules'). The appellant did not respond to the notice. Therefore, respondent No.2 vide his proceedings D.Dis.No.10705/R3(2)/2005-10 dated 10.6.2005 determined the quarry lease held by the appellant and also forfeited the security deposit to the government under Rule 12(5)(h)(xiii) of the Rules.

The appellant, questioning the said order of respondent No.2, filed a revision petition under Rule 35(A) of the Rules.

According to the appellant, it could not pay advance dead rent because a huge amount of Rs. 15,00,000/- has been invested in removing the overburden of the granite, which was full of cracks and joints. The appellant requested respondent No.1 to sympathetically consider its case and set aside the cancellation of the lease.

During the pendency of the representation, respondent No.3 filed an application for his impleadment as party by claiming that immediately on the determination of the lease granted in favour of the appellant, he made an application for granting the said mining lease and, thus, he had the locus standi. After considering the revision petition and the implead petition of respondent No.3, respondent No. 1 dismissed the revision petition vide memo dated 4.10.2006. Respondent No. 1 also directed respondent No. 2 to take necessary action on the pending applications for granting lease.

The appellant challenged orders dated 10.6.2005 and 4.10.2006 in Writ Petition No. 22120 of 2006 but could not persuade the learned Single Judge to nullify the same. The learned Single Judge held that though respondent No.2 issued a notice on 24.3.2005 for payment of advance dead rent for the year 2005-06, the appellant did not avail that opportunity and failed to pay the dead rent. The learned Judge further held that the appellant filed the revision petition three months after the passing of the order by the second respondent and that even during the said interregnum of three months before filing revision, it did not pay the amount due. The learned Judge did take notice of the fact that the appellant had deposited Rs.2,87,300/- and Rs.85,000/- in District Treasury, Ongole but declined to consider the same by observing that the belated action taken by the appellant to pay the dead rent

was not sufficient to restore the lease.

Smt. N. Shobha, learned counsel for the appellant, argued that the orders passed by respondent Nos. 2 and 1 are liable to be declared as vitiated by an error apparent on the face of the record because they discriminate the appellant without any rhyme or reason. She pointed out that in exercise of the revisional power vested in it under Rule 35-A of the Rules, the State Government had restored the lease of similarly situated persons, but same order was not passed in the case of her client. In support of this contention, Smt. N.Shobha cited three instances which were also brought to the notice of the learned Single Judge and contended that respondent Nos.1 and 2 indulged in invidious discrimination by not accepting the dead rent deposited by the appellant during the pendency of the revision petition though deposits made by other two lessees were accepted.

Learned Government Pleader for respondents 1 and 2 argued that respondent No. 2 did not commit any illegality by canceling the lease because the appellant not only failed to pay the dead rent within the stipulated time but also did not respond to the show cause notice dated 24.3.2005. He controverted the plea of discrimination by arguing that the three instances cited by the appellant do not bear any similarity with its case.

Learned counsel for respondent No.3 sought to support the order of the first respondent which was confirmed by the learned Single Judge by submitting that as the appellant admittedly failed to deposit the dead rent within the time, the determination of lease by respondent No.2 and refusal to interfere with his order by respondent No.1 and the learned Single Judge do not suffer from any illegality warranting interference by this Court in its Letters

Patent Jurisdiction.

We have thoughtfully considered the respective submissions. Rule 12(5)(g)(iii) of the Rules lays down that the licensee or the lessee, as the case may be, shall pay prospective fee or dead rent at the time of execution of license or lease deed and for the subsequent years the amount is required to be paid one month in advance. In case such payment is not made within the stipulated time, the Director of Mines and Geology is empowered to determine the lease under Rule 12(5)(h)(xii) and forfeit the security deposit under Rule 12(5)(h)(xiii).

Admittedly, the appellant neither paid the advance dead rent nor submitted its explanation to the show cause notice issued by respondent No.2. Therefore, order dated 10.6.2005 passed by respondent No. 2 cannot, per se, be declared illegal. However, we find considerable merit in the submission of Smt. N. Shobha that respondent No. 1 gravely erred by dismissing the revision petition ignoring the undisputed facts incorporated in the memo of revision and the fact that the entire amount due to the department had been deposited on 14.2.2006.

In the revision petition the appellant specifically pleaded that the granite which was extracted after removing overburden at an expense of Rs.15,00,000/- was found to have cracks and joints and therefore it had to be thrown away as waste. Respondent No.1 did refer to this fact but did not discuss the same. Respondent No. 1 also took notice of the fact that the appellant has deposited the amount due on 14.2.2006 but declined to grant relief by observing that the said deposit was made after a lapse of one year. Before the learned Single Judge it was pleaded on behalf of the appellant that at least in two similar cases, namely, M/s.Kulandeswara Granites, Chittoor District and Sri V.Surya

Prakash, a lessee in respect of a mine in Pullur village, Khazipet Mandal, Kadapa district, respondent No.1 had accepted the belated deposit of dead rent of the respective lessees and restored the leases. It was also pointed out that respondent No.2 had allowed the appeal filed by M/s. Parameshwari Minerals of Medak district against the order of the Deputy Director of Mines and Geology, Nizambad cancelling the lease. The learned Single Judge rejected the plea of discrimination by observing that in the said three cases the lessees either paid the amount and produced the challans along with revision petitions or they appeared before the Director of Mines and sought time.

We have carefully perused the orders passed by respondent No. 1 in the two cases and the order passed by respondent No. 2 in one case which were cited by the appellant before the learned Single Judge. In the case of M/s.Kulandeeswara Granites, Chittoor district a quarry lease was granted in its favour by respondent No.2 on 24.2.1998 over an extent of 2.000 hectors and the lessee failed to pay the advance dead rent for the year 2005-2006. The second respondent, therefore, issued show-cause notice dated 19.3.2005. The lessee neither replied to the show-cause notice nor paid the dead rent. The second respondent, therefore, determined the lease by his proceedings dated 9.11.2005. On 21.1.2006 the lessee filed a revision petition before the first respondent in which it was stated that the reason for non-payment of the advance dead rent was due to some domestic problems. However, he enclosed three challans, one towards dead rent, another towards interest for belated payment and the third towards cess on land assessment, all dated 21.1.2006 (the same date on which the revision petition

was filed). Accepting the revision petition of the lessee the first respondent passed orders on 10.3.2006 whereby it allowed the revision petition and set aside the order of the second respondent determining the lease. From the aforementioned facts it is evident that the only difference between M/s.Kulandeeswara Granites case and the appellant's case is that while the former had deposited the dead rent on the date of filing of revision, the latter deposited the dead rent during the pendency of the revision, but before the disposal of the revision application. We fail to see how this makes any difference at all for the first respondent to decline to exercise its discretion in favour of the appellant as it did in the case of M/s.Kulandeeswara Granites and we are surprised that the learned Single Judge has treated the case of M/s.Kulandeeswara Granites as distinguishable from the case of the appellants.

In the other case, viz., Sri V.Surya Prakash, on the lessee evidently approaching the Government to permit him to clear all the dues, which got accumulated to the tune of Rs.15,13,682/-, the latter permitted the lessee to pay the arrears in ten equal monthly installments by issuing a memo dated 3.9.2005. On 26.9.2005 the lessee made a representation to the first respondent to reschedule the payment by permitting him to pay the dues in 20 installments instead of in 10 instalments. The said request of the lessee was accepted by the first respondent in memo M.No.1/199/M.III(1)/05 dated 'nil'. Though the facts are not similar to the present case, it is clear from the said proceedings that the Government liberally permitted the lessee to pay the overdue amounts by granting facility of installments.

With regard to the third instance, lease in favour of M/s.Parameshwari Minerals was determined by the Deputy

Director of Mines and Geology, Nizamabad for non-payment of arrears of Rs.3,29,430/-. The lessee filed an appeal under Rule 35 of the Rules before the second respondent. The request made by the lessee during the personal hearing for permitting it to pay the arrears in ten equal monthly installments was accepted by the second respondent with the condition that the lessee shall pay the installments before 20th of every month and the second respondent has set aside the order of the Deputy Director of Mines and Geology, Nizamabad. From the facts of this case it is clear that the lessee has not even deposited the arrears before the disposal of the appeal by the second respondent and, in spite of the same, the latter had set aside the order of the Deputy Director determining the lease by permitting the lessee to clear of the arrears in ten equal monthly installments, which were to commence after the disposal of the appeal.

The learned Single Judge failed to notice that the case of the appellant is better than the case of M/s.Parameswari Minerals, inasmuch as, appellant had at least shown its bona fides by depositing the entire arrears before the disposal of the revision petition, whereas M/s. Parameswari Minerals had not paid any amount towards arrears but still the second respondent allowed the appeal and set aside the order of the Deputy Director determining the lease.

On the basis of the above discussion, we hold that the learned Single Judge committed a serious error in holding that the three cases cited before him are distinguishable. In all these cases, either the Government exercising revisional powers under Rule 35-A or the Director of Mines and Geology exercising appellate power under Rule 35 of the Rules allowed the payment of

dead rent/arrears by the lessees far beyond the dates stipulated under the Rules. The appellant's case, in our view, is also similar and we are unable to see any justification in the action of the respondent in treating the appellant's case differently and not exercising a similar discretion in its favour.

As held in **Ramna Dayaram Shetty Vs International Airport Authority of India**[1] every action of the executive government has to be informed by reason and should be free from arbitrariness. The doctrine of equality embodied in Article 14 of the Constitution strikes at arbitrariness in State action and ensures fairness and equality of treatment. In **Kasturilal Laxmi Reddy Vs J & K**[2] the Supreme Court held that where any governmental action fails to satisfy the test of reasonableness it would be liable to be struck down as unreasonable.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. As a sequel to this, order dated 4.10.2006 passed by respondent No. 1 is quashed and the matter is remitted for fresh adjudication of the revision filed by the appellant. Needless to say that before passing fresh order, respondent No. 1 shall hear the representatives of the appellant, the department and respondent No. 3.

As a sequel to the disposal of the appeal in the manner indicated above, W.A.M.P.Nos. 216 and 217 filed by the appellant are disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 22-02-2007.
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[1] (1979) 3 SCC 489
[2] (1980) 4 SCC 1992